

APPEAL NO. 010613

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on March 7, 2001. With respect to the single issue before her, the hearing officer determined that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the sixth quarter. In its appeal, the appellant (carrier) argues that the hearing officer's determination that the claimant made a good faith effort to look for work in the qualifying period is against the great weight of the evidence. The carrier also argues that the hearing officer erred in excluding two of its exhibits. In his response to the carrier's appeal, the claimant urges affirmance.

DECISION

Reversed and remanded.

The parties stipulated that the claimant sustained a compensable injury on _____; that he had an impairment rating of 15% or more; that he did not commute his impairment income benefits; and that the sixth quarter of SIBs ran from December 13, 2000, to March 13, 2001, with a corresponding qualifying period of September 1 to November 30, 2000. The hearing officer determined that the claimant is entitled to SIBs for the sixth quarter because he made a good faith job search in accordance with Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(e) (Rule 130.102(e)). In her decision, the hearing officer purported to list the weeks of the qualifying period and the dates the claimant made applications in each of those weeks. However, the dates listed are from March 1 to May 30 and, as such, they do not appear to correspond to the qualifying period in this case. A question exists as to whether the hearing officer considered the evidence before her for this quarter in resolving the question of the claimant's entitlement to SIBs. Accordingly, we reverse and remand for the hearing officer to reconsider that issue based on the evidence properly before her.

In its appeal, the carrier asserts error in the hearing officer's having sustained a relevance objection to the claimant's Application for [SIBs] (TWCC-52) for the fifth quarter and to a January 30, 2001, functional capacity evaluation (FCE) because they were outside the qualifying period. The fact that these exhibits fell outside the qualifying period goes to their weight not to their admissibility. While the error in evidentiary rulings does not appear to rise to the level of reversible error, in light of the fact that we are remanding on other grounds, on remand, the hearing officer should consider the claimant's TWCC-52 for the fifth quarter and the January 2001 FCE in resolving the issue of the claimant's entitlement to SIBs for the sixth quarter. We note that the hearing officer sustained relevance objections to two of the claimant's exhibits that also fell outside the qualifying period. However, the claimant did not appeal those rulings and, as such, any error associated with them is not before us on appeal.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is

received from the Texas Workers' Compensation Commission's Division of Hearings, pursuant to Section 410.202. See Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

Elaine M. Chaney
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Robert W. Potts
Appeals Judge